

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK  
BROOKLYN DIVISION

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IN RE

HERBERT HAMILTON

DEBTOR

CHAPTER 7

CASE NO. 14-44722

JUDGE: Carla E. Craig

MOTION DATE: November 20, 2014

MOTION TIME: 11:00 am

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**PLEASE TAKE NOTICE** that upon the annexed affirmation of Matthew W. Silverman, an associate of the law firm of Shapiro, DiCaro & Barak, LLC, Select Portfolio Servicing, Inc. as Servicer for U.S. Bank National Association, as trustee, on behalf of the holders of the Asset Backed Securities Corporation Home Equity Loan Trust, Series NC 2006-HE4 Asset Backed Pass-Through Certificates, Series NC 2006-HE4 ("Movant") will move this Court as set forth below:

JUDGE: HON. Carla E. Craig

RETURN DATE & TIME: November 20, 2014 11:00 am

COURTHOUSE: United States Bankruptcy Court  
271 Cadman Plaza East  
Brooklyn, NY 11201

RELIEF REQUESTED: The proposed order will seek to vacate the automatic stay imposed by 11 U.S.C. § 362(a) with regard to the subject property generally described as 191 New Jersey Avenue, Brooklyn, NY 11207, pursuant to 11 U.S.C. § 362(d)(1) based upon the total debt due to Movant, resulting in Movant's lack of adequate protection or, pursuant to 11 U.S.C. § 362(d)(2), inasmuch as the estate has no equity in the aforementioned property.

**PLEASE TAKE FURTHER NOTICE**, that answering affidavits, if any, to the relief requested, must be served upon and received by Shapiro, DiCaro & Barak, LLC at their offices at 105 Maxess Road, Suite N109, Melville, NY 11747 and filed with the Clerk of the United States Bankruptcy Court for the Eastern District of New York at United States Bankruptcy Court, 271 Cadman Plaza East, Brooklyn, NY 11201 no later than five (5) days prior to the return date of this motion.

Dated: October 23, 2014  
Melville, New York



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Matthew W. Silverman  
Bankruptcy Attorney  
Shapiro, DiCaro & Barak, LLC  
Attorneys for Select Portfolio Servicing, Inc. as  
Servicer for U.S. Bank National Association, as  
trustee, on behalf of the holders of the Asset Backed  
Securities Corporation Home Equity Loan Trust,  
Series NC 2006-HE4 Asset Backed Pass-Through  
Certificates, Series NC 2006-HE4  
105 Maxess Road, Suite N109  
Melville, NY 11747  
Telephone: (631) 844-9611  
Fax: (631) 844-9525

**THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSES. THIS NOTICE IS REQUIRED BY THE PROVISIONS OF THE FAIR DEBT COLLECTIONS PRACTICES ACT AND DOES NOT IMPLY THAT WE ARE ATTEMPTING TO COLLECT MONEY FROM ANYONE WHO HAS DISCHARGED THE DEBT UNDER THE BANKRUPTCY LAWS OF THE UNITED STATES.**

TO: SERVICE LIST

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK  
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CASE NO. 14-44722

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**AFFIRMATION IN SUPPORT OF  
ENTRY OF AN ORDER GRANTING  
RELIEF FROM THE AUTOMATIC STAY**

Matthew W. Silverman, an attorney at law duly admitted to practice before the Courts of the State of New York and the U.S. District Court for the Eastern District of New York, hereby affirms the following to be true under penalty of perjury:

1. I am an associate with the law firm of Shapiro, DiCaro & Barak, LLC, attorneys for Select Portfolio Servicing, Inc. as Servicer for U.S. Bank National Association, as trustee, on behalf of the holders of the Asset Backed Securities Corporation Home Equity Loan Trust, Series NC 2006-HE4 Asset Backed Pass-Through Certificates, Series NC 2006-HE4 ("Movant"), a secured creditor of Herbert Hamilton ("Debtor"). As such, I am fully familiar with the facts and circumstances of this case.

2. I make this Affirmation in support of the within request for an Order Granting Relief from the automatic stay, for cause, pursuant to 11 U.S.C. § 362(d)(1) and (2).

3. Jurisdiction is conferred on this Court by the provisions of 28 U.S.C. § 1334. This is a proceeding to terminate and annul the automatic stay and is therefore a "core" proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. Movant is a secured creditor of the Debtor pursuant to a note executed by Debtor on January 26, 2006, whereby Debtor promised to repay the principal amount of \$477,000.00 plus interest to U.S.A Mortgage Bankers of America, Inc. (the "Note"). To secure the repayment of the Note, Debtor granted U.S.A Mortgage Bankers of America, Inc. a mortgage, which was duly recorded in the Kings County Office of the City Register on February 13, 2006 in CRFN 2006000085122 (the "Mortgage," Note and Mortgage, collectively, as the "Loan"), encumbering real property located at 191 New Jersey Avenue, Brooklyn, NY 11207 (the "Property"). The Loan was assigned to Movant as memorialized by instrument dated May 1, 2007 and duly recorded on July 3, 2007 ("Assignment of Mortgage"). Copies of the Note, Mortgage, and Assignment of Mortgage are annexed hereto as **Exhibit "A"**.

5. Upon information and belief, the Debtor herein own(s) the Property.

6. Debtor filed a petition for relief under Chapter 7 of the U.S. Bankruptcy Code on or about September 17, 2014.

7. According to the Debtor's Chapter 7 Statement of Intention, the Debtor intends to surrender the property.

8. The Mortgage was in default on the day the Debtor filed this bankruptcy. Based upon said default, Movant initiated foreclosure proceedings in the Supreme Court of the State of New York, County of Kings, under index number 7585/07. Judgment of Foreclosure & Sale ("JFS") was entered March 2, 2012 by the Honorable Lawrence Knipel. A copy of the JFS is annexed hereto as **Exhibit "B"**. The filing of the instant bankruptcy stayed said action.

9. Debtor has failed to make current mortgage payments due to Movant under the terms of the Loan. As a result, the Mortgage remains due for the November 1, 2006 payment and each subsequent payment thereafter.

10. The amount now due under the Mortgage is as follows:

16 Defaulted Monthly Payments at \$3,298.75 each (November 2006 through February 2008)	\$52,780.00
6 Defaulted Monthly Payments at \$3,835.32 each (March 2008 through August 2008)	\$23,011.92
6 Defaulted Monthly Payments at \$3,808.13 each (September 2008 through February 2009)	\$22,848.78
6 Defaulted Monthly Payments at \$3,320.77 each (March 2009 through August 2009)	\$19,924.62
61 Defaulted Monthly Payments at \$3,303.49 each (September 2009 through September 2014)	\$201,512.89
Late Charges	\$395.82
Property Inspections	\$776.10
Appraisal Fees	\$1,081.00
Foreclosure Attorneys Fees	\$4,525.00
Litigation Fees	\$1,395.00
Foreclosure Costs	\$2,906.52
Bankruptcy Attorneys Fees	\$750.00
Filing Fee	\$176.00
Suspense	\$(367.22)
Total Delinquencies	<hr/> \$331,716.43

11. A copy of the Relief from Automatic Stay-Real Estate and Cooperative Apartments Affidavit ("Affidavit") is annexed hereto as **Exhibit "C"**.

12. Upon information and belief, as a result of the total debt due and owing, Movant has been required to advance monies for taxes and insurance to protect its security interest.

13. Moreover, in view of the total debt due to Movant and in light of the monies being expended by Movant for taxes and insurance, Movant is no longer adequately protected. The automatic stay must be vacated for cause pursuant to 11 U.S.C. § 362(d)(1).

14. As set forth in the Affidavit, as of September 23, 2014, the approximate debt due and owing to Movant equals \$885,648.80. The debt is accruing interest at a rate of 7.95% per annum.

15. Based upon the Debtor's Schedule A, the Property has an estimated fair value of approximately \$476,819.00. A copy of Debtor's Schedule A is annexed hereto as **Exhibit "D"**. As indicated in paragraph 14 herein above, the total debt to Movant equals \$885,648.80. As such, there is no dispute that the debt due to the Movant exceeds the value of the Property. By the Debtor's own valuation, the estate has no equity in the Property sought to be foreclosed. Accordingly, relief from the automatic stay is also warranted under 11 U.S.C. § 362(d)(2).

16. Movant, according to the laws of the State of New York and the terms and conditions of the Mortgage, desires to continue foreclosure proceedings as we have obtained JFS in the Supreme Court of the State of New York, County of Kings, under index number 7585/07.

17. Pursuant to paragraph 14 of the mortgage, the Movant requests that attorney fees in the amount of \$750.00 and costs of \$176.00 be awarded in bringing this motion.

18. The Debtor, Debtor's Attorney, the Chapter 7 Trustee, the Office of the United States Trustee and all creditors that have filed a notice of appearance have each been duly served with the within Notice of Motion, Affirmation, Exhibits and proposed Order Vacating Stay, as more fully set forth in the annexed affidavit of mailing.

19. No prior application has been made for the relief requested herein.

20. The entity which has the right to foreclose is: U.S. Bank National Association, as trustee, on behalf of the holders of the Asset Backed Securities Corporation Home Equity Loan Trust, Series NC 2006-HE4 Asset Backed Pass-Through Certificates, Series NC 2006-HE4 by virtue of being the holder and owner of the note.

**WHEREFORE**, Movant respectfully requests an Order of this Court vacating the automatic stay for cause pursuant to 11 U.S.C. § 362(d)(1) and (2) as to the aforementioned Property; allowing Movant, its agents, assigns or successors in interest, leave to foreclose the Mortgage secured by the subject Property; and for such other, further and different relief as to this Court may seem just, proper and equitable.

Dated: October 23, 2014  
Melville, New York



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Matthew W. Silverman  
Bankruptcy Attorney  
Shapiro, DiCaro & Barak, LLC  
Attorneys for Select Portfolio Servicing, Inc. as  
Servicer for U.S. Bank National Association, as  
trustee, on behalf of the holders of the Asset Backed  
Securities Corporation Home Equity Loan Trust,  
Series NC 2006-HE4 Asset Backed Pass-Through  
Certificates, Series NC 2006-HE4  
105 Maxess Road, Suite N109  
Melville, NY 11747  
Telephone: (631) 844-9611  
Fax: (631) 844-9525

**SHAPIRO, DICARO & BARAK, LLC**

Attorneys for Select Portfolio Servicing, Inc. as Servicer  
for U.S. Bank National Association, as trustee, on behalf  
of the holders of the Asset Backed Securities Corporation  
Home Equity Loan Trust, Series NC 2006-HE4 Asset  
Backed Pass-Through Certificates, Series NC 2006-HE4  
105 Maxess Road, Suite N109  
Melville, NY 11747  
Telephone: (631) 844-9611, Fax: (631) 844-9525  
**Matthew W. Silverman**

UNITED STATES BANKRUPTCY COURT  
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**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NEW YORK     )  
                                      )ss:  
COUNTY OF SUFFOLK    )

I, Rene Longhito, being sworn, say, I am not a party to this action; I am over 18 years of age, I reside in Islip Terrace, New York.

On October 23, 2014 I served the within Notice of Motion, Affirmation in Support, Exhibits and Proposed Order Granting Relief from the Automatic Stay upon:

TO: Debtor  
Herbert Hamilton  
191 New Jersey Avenue  
Brooklyn, NY 11207



Attorney for Debtor  
Heriberto A. Cabrera  
480 39th Street  
Brooklyn, NY 11232

Trustee  
David J. Doyaga  
26 Court Street  
Suite 1002  
Brooklyn, NY 11242

US Trustee  
U.S. Trustee  
U.S. Federal Office Building  
201 Varick Street, Room 1006  
New York, NY 10014

Atlas Acquisitions LLC  
294 Union St.  
Hackensack, NJ 07601  
Attn: Avi Schild

at the addresses designated by the foregoing individuals for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

  
\_\_\_\_\_  
Rene Longhito

Sworn to before me this  
23rd day of October, 2014

  
\_\_\_\_\_  
Notary Public

**ROSS STEVEN MATRAY**  
Notary Public, State of New York  
No. 01MA6309731  
Qualified in Nassau County  
Commission Expires 08/18/2018

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**ORDER GRANTING RELIEF FROM  
THE AUTOMATIC STAY**

**UPON** consideration of the Application of Select Portfolio Servicing, Inc. as Servicer for U.S. Bank National Association, as trustee, on behalf of the holders of the Asset Backed Securities Corporation Home Equity Loan Trust, Series NC 2006-HE4 Asset Backed Pass-Through Certificates, Series NC 2006-HE4, ("Movant") dated October 23, 2014, and it appearing that neither the Debtor nor the Chapter 7 Trustee nor the US Trustee have opposition to the motion brought by Movant, for relief from the automatic stay, and with good cause appearing therefore, it is

**ORDERED** that the automatic stay, heretofore in effect pursuant to 11 U.S.C. § 362(a), is hereby vacated for cause pursuant to 11 U.S.C. § 362(d) as to Movant, its agents, assigns or successors in interest, so that Movant, its agents, assigns or successors in interest, may take any and all action under applicable state law necessary to foreclose its mortgage on premises known as 191 New Jersey Avenue, Brooklyn, NY 11207 without further application to this Court, and it is further

**ORDERED** that in the event this case is converted to a case under any other chapter of the U.S. Bankruptcy Code, this Order will remain in full force and effect; and it is further

**ORDERED** pursuant to paragraph 14 of the Mortgage, the Movant requests that attorneys fees in the amount of \$750.00 and costs of \$176.00 be awarded in bringing this motion; and it is further

**ORDERED** that the Movant shall promptly report and turn over to the Chapter 7 Trustee any surplus monies realized by any sale of the Property.